



ALCOHOLIC BEVERAGES



**EXHIBIT F-2**

**FORM OF BT DISTRIBUTION AGREEMENT**

Final version

Date: \_\_\_\_\_

**(1) THISTLE B.V.**

**(2) BRITISH TELECOMMUNICATIONS PLC**

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**DISTRIBUTION AGREEMENT**

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**THIS AGREEMENT BETWEEN:**

- (1) Thistle B.V., an entity organized under the laws of the Netherlands ("....."), having an office at \_\_\_\_\_("Thistle BV"); and
- (2) BRITISH TELECOMMUNICATIONS PLC ("BT" or "the Distributor") registered office 81 Newgate Street London EC1A 7AJ

**RECITALS**

Thistle BV, a joint venture formed by AT&T Corp. and British Telecommunications plc, and BT desire BT to distribute Thistle BV's Global Communications Services to certain business customers, other than the Qualifying MNC Customers supported directly by Thistle BV and/or its Subsidiaries, pursuant to the terms of this Agreement and the Framework Agreement entered among AT&T Corp., VLT Corporation, British Telecommunications plc, BT (Netherlands) Holdings BV and Thistle BV simultaneously herewith ("Framework Agreement").

**OPERATIVE PROVISIONS**

**PART I: PRELIMINARY MATTERS**

**1 Interpretation**

**1.1 Definitions:**

All terms defined in the Framework Agreement shall have the same meaning in this Agreement, unless otherwise modified by a definition set forth in this section and in this Agreement.

**"Charge"** means any charge payable by the Distributor to Thistle BV in consideration of the provision of the Global Communications Services.

**"Customer"** means an existing or potential business customer (including its employees in their capacity as employees) that purchases Global Communications Services from Distributor, but excluding Qualifying MNC Customers that agree to purchase Global Communications Services directly from Thistle BV or one or more Thistle BV Subsidiaries.

**"Distributor's Network"** means those Telecommunication Systems owned, operated or contracted for by the Distributor by means of which Messages are passed between any Global Point of Presence and any Site located in the Territory.

**"Equipment"** means any telecommunication apparatus installed or otherwise made available at a Site in order to provide Global Communications Services to a Customer.

**"Forecast"** means the non-binding projections of Global Communications Services requirements provided by the Distributor to Thistle BV in accordance with Clause 3.2 of this Agreement.

**"Global Platform"** means those transmission, switching, signalling, network intelligence and/or service management systems which from time-to-time are owned, leased, managed or contracted for by Thistle BV , excluding any Remote Network, in order to provide the Global Communications Services.

**"Global Point of Presence"** means a point on the Global Platform at which Messages pass between the Global Platform and either the Distributor's Network or a Remote Network.

**'Intellectual Property'** means any patent, copyright, registered design, trade mark or other industrial or intellectual property right subsisting in the Territory in respect of the Global Communications Services, and applications for any of the foregoing.

**'Invoice Value'** means the sums invoiced by Thistle BV to the Distributor in respect of any Global Communications Services, less any value added tax (or other taxes, duties or levies)

**"Message"** means the subject matter of the transmission or conveyance falling within subparagraphs (a) to (d) in the definition of "Telecommunication System" in this Clause 1.1.

**"Thistle Trade Marks"** means such registered or unregistered Thistle BV Trade Marks or service marks (if any) as Thistle BV may own or have the right to use in relation to any or all Global Communications Services.

**"Party"** means a party to this Agreement.

**"Remote Network"** means those Telecommunication Systems owned and/or operated by a third party by means of which Messages are passed between any Global Point of Presence and any Site located outside the Territory.

**"Service Description"** means the description of the Global Communications Services, including the applicable service levels, that are provided to Distributor pursuant to this Agreement

**"Service Request Procedure"** means the procedure for ordering Global Communications Services set out in Schedule 3.

**"Site"** means any premises located outside the Territory to which any Global Communications Services are provided for a Customer

**"Telecommunication System"** means a system for the conveyance, through the agency of electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy, of:

- (a) speech, music and other sounds;
- (b) visual images;
- (c) signals serving for the importation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of sounds or visual images; or
- (d) signals serving for the actuation or control of machinery or apparatus.

**"Technical Intellectual Property Rights"** mean patents, utility models, design patents, registered designs, copyright of any kind, semi-conductor topography



rights, design rights and any rights of a similar nature in any country of the world including rights in trade secrets and confidential information where such rights arise and includes applications therefor, but excludes Thistle BV Trade Marks

**"Territory"** means the United Kingdom and its Crown dependencies, trusts, territories and possessions listed on Schedule 1.1B of the Framework Agreement.

**"Year"** means any complete period of twelve months commencing on the Effective Date and on each anniversary thereof.

- 1.2 The expressions "Thistle BV" and "Distributor" shall include their respective successors and permitted assigns.
- 1.3 Except as expressly provided herein, any reference to any legislative act shall be deemed to include any amendment, replacement or re-enactment thereof for the time being in force and to include any delegated legislation, orders, notices, directions, consents or permissions made thereunder and any condition attaching thereto.
- 1.4 In this Agreement words importing the singular include the plural and vice versa and words importing gender include any other gender.
- 1.5 The headings in this Agreement are for ease of reference only and shall not be taken into account in the construction or interpretation of any provision to which they refer.
- 1.6 References in this Agreement to Clauses or Schedules are references to clauses of or schedules to this Agreement. The Schedules are an integral part of this Agreement.
- 1.7 Any undertaking in this Agreement not to do any act or thing shall be deemed to include an undertaking not to permit or suffer to the doing of that act or thing.
- 1.8 The expression "person" used in this Agreement shall include (without limitation) any individual, partnership, body corporate or unincorporated association.
- 1.9 References in this Agreement to a Party being obliged to procure that

another person shall do something or shall not do something shall be deemed to require that Party to exercise all voting rights and other powers of control available to that Party in relation to that person so as to procure, insofar as that Party is able by the exercise of such rights and powers, that that person does or does not do such thing, as appropriate.

- 1.10 In accordance with Article 20.1. of the Framework Agreement, this Agreement shall become effective upon the Closing ("Effective Date").
- 1.11 Either party will be permitted to withdraw from or not to consummate this Agreement by providing written notice thereof to the other party if a regulatory authority of competent jurisdiction raises objections of a competition or regulatory nature to this Agreement and/or its terms which the parties, having used their reasonable endeavours, are unable to resolve. The parties shall be deemed not to have been able to resolve such objections if either or both of them are unable to find solutions satisfactory to such authorities, which do not undermine their fundamental rationale for entering into this Agreement.

## **PART II: DISTRIBUTORSHIP**

### **2 Appointment as Distributor**

- 2.1 Thistle BV appoints the Distributor as its exclusive distributor for the marketing, promotion, sale and distribution of Global Communications Services to Customers in the Territory except for those customers being served directly by International Carrier Services Unit as outlined in the Framework Agreement. The parties acknowledge that from the Closing until 15<sup>th</sup> September 2000:
  - a) MCI may continue to serve as a distributor of Global Communications Services, branded as "Concert Services", in the Territory, and
  - b) for three years thereafter MCI customers of "Concert Services" shall have the right to be supported;subject to the terms and conditions of the Distribution Agreement dated 14<sup>th</sup> June 1994, between Concert Communications Company and MCI, and in accordance with the terms and conditions of the Unwind Agreement concluded between British Telecommunications plc, Concert

Communications Company and MCI dated 7<sup>th</sup> August 1998. For the avoidance of doubt, the Distributor shall be free to respond to unsolicited requests for Global Communications Services from Customers outside the Territory. Except as authorised in this Agreement the Distributor shall not market the services outside the Territory.

- 2.2 Notwithstanding the provisions of clause 2.1 the Distributor shall not sell Global Communications Services to Qualifying MNC Customers, except where otherwise provided in the Framework Agreement, or the MNC Distribution Agreement of today's date, or as provided by law of competent jurisdiction.

### **PART III: SERVICES**

#### **3 Provision of Services**

- 3.1 For the purposes of this Clause 3:

3.1.1 **"non-standard Global Communications Services"** means a service which comes within the definition of a Global Communications Services but which at the time of the request is not included in the current range of Global Communications Services; and

3.1.2 **"Additional Request"** means a request by the Distributor for Global Communications Services where the effect of such request, taken together with all current commitments of Thistle BV to provide Global Communications Services to the Distributor would be to exceed the aggregate requirements for Global Communications Services for the relevant period as stated in the Forecast.

- 3.2 Within ninety days of the Effective Date of this Agreement, the Distributor shall provide an initial Forecast in accordance with the provisions of Schedule 4 of the aggregate requirements for each of the Global Communications Services. The procedure for making and revising such a forecast and for subsequent Years is contained in Schedule 4.

- 3.3 Thistle BV shall provide Global Communications Services to the

Distributor upon request except in the case of (a) an Additional Request or (b) where the Service requested includes a non-standard Global Communications Services in which event Thistle BV shall use reasonable endeavours to offer terms on which it is prepared to provide such services but shall not be under any liability for failure to do so to the Distributor.

- 3.4 The Distributor shall order Global Communications Services in accordance with the Service Request Procedure described in Schedule 3.
- 3.5 Where Thistle BV supplies any Global Communications Services pursuant to this Clause 3 it shall do so in accordance with the applicable Service Description or, in the case of a non-standard Global Communications Services, in accordance with a mutually agreed Service Description.
- 3.6 The terms and conditions pursuant to which Thistle BV provides the Global Communications Services to the Distributor are set out in Schedule 5. The procedures under which Global Communications Services including non-standard Global Communications Services are supplied shall be subject to mutual agreement in accordance with the Service Request Procedure set out in Schedule 3.
- 3.7 Thistle BV shall provide customer support services to the Distributor to the extent set out in any applicable Service Description and as set out in Schedule 6.
- 3.8 The Distributor shall be responsible for providing the necessary use of the Distributor's Network, customer service and related services and facilities, where the Distributor uses such network, customer service and related services and facilities to provide the Global Communications Services. Thistle BV and the Distributor shall co-operate as may be reasonably necessary to co-ordinate the operational matters affecting the interworking between the Distributor's Network and the Global Platform in respect of the supply of Global Communications Services. In relation to any Service, Thistle BV shall be excused from any failure to comply with the applicable service levels to the extent such failure is caused by the Distributor's Network.
- 3.9 In relation to any particular Customer or Customers:

3.9.1 either Party may request the other Party to act as agent of the first Party, on terms to be agreed, in discharging its obligations under this Clause 3 where this is necessary for regulatory or other compelling reasons (including without limitation economic reasons);

3.9.2 either Party may by mutual agreement act as subcontractor to the other in performing the obligations of the other under this Clause 3. on terms to be agreed.

**4 New Global Communications Services and Changes to existing Global Communications Services**

4.1 From time-to-time (at least bi-annually), the Parties will meet to discuss potential changes (e.g., additions, modifications, discontinuances) to the Global Communications Services, new technology, Customer service requirements, Charges, Customer support services and the responsibilities of the Parties hereunder.

Thistle BV may upon notice add to, substitute or reduce the current range of Global Communications Services or vary the Service Description and terms and conditions applicable to any of the current range of Global Communications Services in accordance with the procedure set out in Schedule 1, Provided That any such substitution, reduction or variation shall not apply for a period of three months, from notification, subject to Applicable Law, if in the reasonable opinion of Thistle BV, it would affect adversely the functionality or performance specifications of:

4.1.1 any Service being provided to the Distributor to the extent that the Distributor is under an obligation to any Customer to provide such Service; or

4.1.2 any Service already requested by the Distributor under the Service Request Procedure set out in Schedule 3, to the extent that the Distributor may be or become obligated to any Customer to provide such Service; or

4.1.3 any Service in respect of which Thistle BV has given a quotation to

the Distributor under the Service Request Procedure, for the validity period of such quotation as specified in the relevant Service Description or as detailed in Schedule 9 and to the extent that the Distributor may be or become obligated to any Customer to provide such quoted Service.

- 4.2 While Thistle BV shall have the ultimate discretion to implement changes to the Service Descriptions of Global Communications Services as described above, it shall
- a) take due consideration of the impacts of such changes on the Distributor's Customers, and
  - b) shall give as much advance notice as reasonably practical, where such changes may be expected to have an adverse effect on the Distributor's Customers, and
  - c) shall involve the Technology Unit in as much as the terms of the Framework Agreement require such involvement.

#### **PART IV: MARKETING , SUPPORT AND PURCHASE OBLIGATIONS**

##### **5 Obligations of the Distributor**

- 5.1 The Distributor shall:
- a) use all reasonable endeavours to sell Global Communications Services in the Territory including without limitation maintaining adequate sales and distribution personnel and appropriate facilities; and
  - b) spend such sums on advertising and promoting the Global Communications Services in the Territory during each Year of this Agreement, as are reasonably necessary for the Distributor to carry out its obligations under this Agreement.
- 5.2 The Distributor shall comply with the Minimum Revenue Commitment as set out in Schedule 11.
- 5.3 Except as provided in the Framework Agreement, the Distributor will and will cause its wholly-owned Subsidiaries and, subject to the Fiduciary Duty Standard, its other Subsidiaries to, purchase all their requirements

for Global Communications Services and customer support services as detailed in Schedule 6, from Thistle BV.

- 5.4 The Distributor shall attend periodical marketing meetings to consider market trends, Global Communications Services development, quality of service, Customer satisfaction, pricing and other matters agreed upon by the parties.

**6 Obligations of Thistle BV**

- 6.1 Thistle BV shall provide reasonable technical and commercial support to the Distributor in sales and marketing activities, as follows:

6.1.1 advising on the most suitable means, technical and commercial, of meeting the requirements of a potential Customer;

6.1.2 supporting account management; and

6.1.3 assisting and participating in the preparation and presentation of proposals to potential Customers, consistent with product management support.

as set out and subject to the terms of Schedule 7.

- 6.2 Thistle BV shall attend periodical marketing meetings to consider market trends, Global Communications Services development, quality of service, Customer satisfaction and other matters agreed upon by the parties.
- 6.3 Thistle BV shall provide the training services referred to in Schedule 12.
- 6.4 Thistle BV shall provide all other services as specified in schedules to this Agreement.
- 6.5 For Customer requirements for domestic, national services in 2 or more continents and 4 or more countries, such Customers will be considered for Qualifying MNC Customer status in accordance with the process defined in the Framework Agreement.

For Customers who:

- a) are not admitted to Qualifying MNC Customer status as above; or
- b) require domestic, national services in less than 2 continents and less than 4 countries,

Thistle BV shall endeavor to provide domestic, national services in conjunction with Global Communication Services. The terms, conditions and pricing for the domestic, national services shall be agreed upon on an individual case by case basis.

## **7 Branding**

- 7.1 Thistle BV hereby authorises the Distributor to use the Thistle Trade Marks on or in relation to the Global Communications Services for the purposes only of exercising its rights and performing its obligations under this Agreement.
- 7.2 The Distributor shall ensure that each reference to and use of any of the Thistle Trade Marks by the Distributor is in a manner from time to time approved by Thistle BV and accompanied by an acknowledgement, in a form approved by Thistle BV, that the same is a trade mark (or registered trade mark) of Thistle BV.
- 7.3 The Distributor shall not:
  - a) make any modifications to the Global Communications Services;
  - b) alter, remove or tamper with any Thistle BV Trade Marks, numbers, or other means of identification used on or in relation to the Global Communications Services;
  - c) use any of the Thistle BV Trade Marks in any way which might prejudice their distinctiveness or validity or the goodwill of Thistle BV therein;
  - d) use in relation to the Global Communications Services any Thistle BV Trade Marks, other than the Thistle BV Trade Marks and BT Trade Marks, without obtaining the prior written consent of Thistle BV; or
  - e) use in the Territory any Thistle BV Trade Marks or trade names so resembling any trade mark or trade names of Thistle BV as to be likely to cause confusion or deception.
- 7.4 Except as provided in clause 7.1 the Framework Agreement and the related IPR Agreement, the Distributor shall have no rights in respect of



any trade names or Thistle BV Trade Marks used by Thistle BV.

- 7.5 The Distributor shall, at the expense of Thistle BV, take all such steps as Thistle BV may reasonably require to assist Thistle BV in maintaining the validity and enforceability of the Intellectual Property of Thistle BV during the term of this Agreement.
- 7.6 The Distributor shall at the request of Thistle BV execute such registered user agreements or licences in respect of the use of the Thistle BV Trade Marks in the Territory as Thistle BV may reasonably require, provided that the provisions thereof shall not be more onerous or restrictive than the provisions of this Agreement.
- 7.7 Without prejudice to the right of the Distributor or any third party to challenge the validity of any Intellectual Property of Thistle BV, the Distributor shall not do or authorise any third party to do any act which would or might invalidate or be inconsistent with any Intellectual Property of Thistle BV and shall not omit or authorise any third party to omit to do any act which, by its omission, would have that effect or character.
- 7.8 The Distributor shall promptly and fully notify Thistle BV of any actual, threatened or suspected infringement in the Territory of any Intellectual Property of Thistle BV which comes to the Distributor's notice, and of any claim by any third party so coming to its notice that the importation of the Global Communications Services into the Territory, or their sale therein, infringes any rights of any other person, and the Distributor shall at the request and expense of Thistle BV do all such things as may be reasonably required to assist Thistle BV and Thistle BV in taking or resisting any proceedings in relation to any such infringement or claim.

## **PART V: TECHNICAL AND OPERATIONAL MATTERS**

### **8 The Global Platform**

- 8.1 The architecture, design and continuing development of the Global Platform including without limitation the location and number of Global Points of Presence shall be in the discretion of Thistle BV. Distributor shall be informed in advance concerning the location of new proposed Global Points of Presence in the Territory, so as to maximize connectivity to Distributor's Network. Without prejudice to the foregoing, Thistle BV will

endeavor, in the exercise of its discretion, to ensure that Distributor shall not be significantly disadvantaged in its role as a "preferred supplier" as defined in the Framework Agreement.

- 8.2 Upon request by the Distributor, Thistle BV shall provide a schedule of locations of Global Points of Presence within the Territory.

**9 Connection of Equipment and Systems**

- 9.1 The Distributor shall ensure that the Distributor's Network conforms at the Global Point of Presence to the interface specifications notified by Thistle BV subject to Applicable Law.

- 9.2 The Distributor shall not connect directly or indirectly to the Global Platform or to any Remote Network, and shall not permit any Customer so to connect, any equipment or Telecommunication System which damages or is likely to cause any damage to the Global Platform or to such Remote Network.

- 9.3 Thistle BV shall not connect directly or indirectly to the Distributor's Network any equipment or Telecommunication System which damages or is likely to cause any damage to the Distributor's Network.

- 9.4 The Distributor shall comply with, and shall require and ensure that its Customers comply with, such reasonable security procedures relating to the use of the Global Communications Services as Thistle BV may notify to the Distributor from time to time.

- 9.5 Thistle BV shall comply with such reasonable security procedures relating to the use of the Distributor's Network as the Distributor may notify to Thistle BV from time to time.

**10 Equipment**

- 10.1 The provisions of this Clause 10 shall apply insofar as Thistle BV is obliged in accordance with the applicable Service Description to provide any Equipment at a Site, outside the Territory.

- 10.2 Thistle BV shall supply the Distributor in reasonable time with the relevant information to enable the Distributor to co-ordinate with its Customer,

where necessary, so that the Customer can prepare the Site for the delivery and installation of the Equipment. The Distributor shall ensure in its Customer contracts or otherwise, that the Customer provides reasonable assistance and facilities to Thistle BV (or supplier appointed by Thistle BV) in the installation of the Equipment and shall ensure that the Customer subsequently provides or procures suitable accommodation, assistance, facilities, and environmental conditions for the housing of the Equipment and all necessary electrical and other installations and fittings. The Distributor shall ensure that the Customer effects such preparation and provision at no cost to Thistle BV before the Equipment is installed at a Site.

- 10.3 The Distributor shall ensure, in its Customer contracts or otherwise, that the Customer shall:
- 10.3.1 house, keep and use the Equipment in accordance with such reasonable written instructions as may be notified by Thistle BV from time to time;
  - 10.3.2 unless otherwise agreed, keep the Equipment at the Site and not to add to, modify, or in any way interfere with, the Equipment;
  - 10.3.3 not cause the Equipment to be repaired or serviced except as approved by Thistle BV, its agents or subcontractors;
  - 10.3.4 provide Thistle BV with reasonable access to the Equipment and in any event such access as is specified in the applicable Service Description.
- 10.4 Thistle BV undertakes directly or indirectly to install the Equipment in a timely and proper manner.
- 10.5 No title to the Equipment shall pass to any person unless otherwise expressly agreed.
- 10.6 The Distributor shall ensure, in its Customer contracts or otherwise, that the Customer shall be responsible for the Equipment while it is at a Site and shall be liable to Thistle BV for any loss or damage to the Equipment (except in so far as any such loss or damage is attributable to the negligent or wilful act or omission of Thistle BV, its agents, subcontractors

or employees).

## **11 Access to Sites**

11.1 The Distributor shall ensure that Thistle BV, its employees, agents and subcontractors have such access to any Site as may be reasonably necessary for the performance by Thistle BV of its obligations under this Agreement and in any event such access as may be specified in the applicable Service Description.

11.2 The Distributor shall use its reasonable endeavours to ensure that no employee of Thistle BV, its agents or subcontractors when requesting access to any Site pursuant to Clause 11.1 is refused admittance to such Site or required to leave such Site except for good and substantial cause. In the event of any such refusal or requirement without good cause:

11.2.1 Thistle BV shall be excused from any failure to provide Global Communications Services in accordance with the applicable service levels to the extent that such failure results from such refusal or requirement; and

11.2.2 the Distributor shall reimburse Thistle BV in respect of any additional costs and expenses which it may incur as a result of such refusal or requirement.

## **12 Regulatory Approvals**

12.1 Where there is a requirement under the law or regulation of any jurisdiction to obtain (a) any consent, licence or authorisation for the provision of Global Communications Services and/or (b) approval for the use of any telecommunication apparatus by any person providing or making use of the Global Communications Services, then as between the Parties hereto one or other of them shall be obliged to obtain or to procure the obtaining by its contractors or agents of such consent, licence or authorisation in accordance with the following provisions:

12.1.1 in relation to the establishment of the Global Platform or the supply

of Global Communications Services to the Distributor, the obligation shall be that of Thistle BV; and

12.1.2 in relation to the supply of Global Communications Services to the Customer, the obligation shall be that of the Distributor. Thistle BV has responsibility to understand and advise on the regulatory environment in all countries. Where possible Thistle BV will ensure the Distributor can sell through regulatory arrangements effected by Thistle BV, but where there is a requirement for Distributor to have its own license, the Distributor shall do so at its own expense, but with assistance from Thistle BV or its agents

12.2 Where the obligation to obtain any such consent, licence or authorisation is imposed on either Party or both Parties under any law or regulation in any jurisdiction, then the obligation shall be that of that Party or as the case may be of both Parties, notwithstanding any contrary provision of Clause 12.1.

12.3 Each Party shall provide reasonable and appropriate assistance to the other in the performance by the other Party of its obligations under this Clause. Expenses incurred in rendering assistance requested by the other Party shall be chargeable back to the other Party following notice in advance of the provision of assistance to the requesting Party.

## **PART VI: FINANCIAL MATTERS**

### **13 Charges**

13.1 In consideration of the provision of the Global Communications Services, the Distributor shall pay to Thistle BV the Charges calculated in accordance with and subject to adjustment as provided for in Schedule 8.

13.2 Where the Distributor requests a quotation for the provision of non-standard Global Communications Services pursuant to the Customized Products and Services Section of Schedule 7, Thistle BV shall provide such quote in US Dollars. Thistle BV shall not be obliged to quote in respect of a service period exceeding 36 months. Beyond 36 months will be subject to the special bid procedure.

- 13.3 All Charges are exclusive of any applicable value added tax, sales tax or other indirect taxes which shall be charged in accordance with applicable law and payable by the Distributor, except to the extent that the Distributor provides Thistle BV a valid tax exemption certificate. Income taxes shall not be chargeable to the Distributor.
- 13.4 The price and other terms and conditions on which the Global Communications Services are supplied to its Customers shall be determined by the Distributor in its sole discretion.

**14 Billing and Payment**

- 14.1 All Charges shall be payable in U.S. dollars, unless otherwise agreed.
- 14.2 The Charges shall be due monthly in arrears.
- 14.3 Thistle BV shall present an invoice for Charges and associated Invoice Detail (usage data) as soon as reasonably practicable but typically within 30-60 days after the end of the month in which Global Communication Services are provided. The sum stated in each invoice shall be payable within 30 days of presentation.
- 14.4 Neither invoices nor Invoice Detail may be presented later than twelve (12) months from the end of the month in which services were provided.
- 14.5 Each invoice presented by Thistle BV shall be in an agreed format and shall provide such information as is reasonably necessary for the verification of Charges and as set out in Schedule 8.
- 14.6 In respect of any sum payable under this Agreement, in the event of late payment which is not related to or caused by Thistle BV's late invoicing described in Clause 14.4, interest shall be chargeable from the date on which such sum was due and payable until the date of payment. Such interest shall be calculated from day to day at a rate equivalent to the lesser of the permissible lawful rate in the Territory and two per cent above LIBOR, and shall accrue both before and after judgement. Interest shall not be charged unless Thistle BV has delivered at least two written reminders to the Distributor.

## **PART VII: FURTHER PROVISIONS**

### **15    Liability of the Parties**

- 15.1 Thistle BV and the Distributor shall indemnify and hold each other harmless against all liability, loss, damage and expense (including but not limited to reasonable legal fees and legal costs) resulting from injury to or death of any person (including injury to or death of their respective subcontractors or employees) to the extent that such liability, loss, damage or expense was caused by any negligent or wilful act or omission by the Party from whom indemnity is sought, its agents or employees.
- 15.2 Thistle BV and the Distributor shall indemnify and hold each other harmless against all liability, loss, damage and expense (including but not limited to reasonable legal fees and legal costs) resulting from loss of or damage to real or personal property (including damage to their property) to the extent that such liability, loss, damage or expense was caused by any negligent or wilful act or omission by the Party from whom indemnity is sought, its agents or employees.
- 15.3 THE AGGREGATE LIABILITY OF EACH PARTY TO THE OTHER FOR ALL CLAIMS MADE DURING ANY YEAR UNDER THIS AGREEMENT FOR DAMAGES NOT OTHERWISE EXCLUDED HEREUNDER SHALL BE LIMITED TO TEN MILLION US DOLLARS IN RESPECT OF ANY OR ALL CLAIMS MADE IN THAT YEAR.
- 15.4 WHERE IN RELATION TO ANY SERVICE THE APPLICABLE SERVICE DESCRIPTION PROVIDES FOR A SYSTEM OF REBATES OR CREDITS AGAINST CHARGES IN RESPECT OF FAILURE TO PROVIDE SUCH SERVICE IN ACCORDANCE WITH THE APPLICABLE SERVICE LEVELS, SUCH REBATES OR CREDITS SHALL BE THE EXCLUSIVE FINANCIAL REMEDY OF THE DISTRIBUTOR IN RESPECT OF SUCH FAILURE. FOR THE AVOIDANCE OF DOUBT SUCH REBATES OR CREDITS SHALL BE DEEMED TO BE A LIABILITY OF Thistle BV FOR THE PURPOSES OF THIS AGREEMENT.
- 15.5 Except with respect to such loss or damage as is referred to in Clauses 15.1 and 15.2, the Distributor shall ensure that to the extent permitted by applicable law its contracts with Customers exclude all liability of Thistle

BV to the Customer and preclude the Customer from making any claim against Thistle BV, and in the event that any such claim is made by a Customer howsoever arising from or related to the provision of Global Communications Services under this Agreement the Distributor shall indemnify Thistle BV in respect of such claim.

15.6 IN ANY EVENT, IN NO CIRCUMSTANCES INCLUDING THE NEGLIGENT ACT OR OMISSION OF ITSELF, ITS SERVANTS OR AGENTS SHALL EITHER PARTY BE LIABLE TO THE OTHER IN CONTRACT, TORT OR OTHERWISE FOR ANY LOSS OF REVENUE, BUSINESS, CONTRACTS, ANTICIPATED SAVINGS OR PROFITS OR ANY LOSS OR DESTRUCTION OF DATA OR FOR ANY INDIRECT OR CONSEQUENTIAL LOSS WHATSOEVER.

15.7 The provisions of this Clause 15 shall continue to apply notwithstanding the termination or expiry of this Agreement for any reason whatsoever.

## **16 Confidentiality and Data Protection**

16.1 Thistle BV shall not disclose any Message conveyed by means of the Global Platform or the existence of any such Message except in relation to any information requested or required to be disclosed by any court or governmental or regulatory authority entitled by law to require the same.

16.2 The Parties shall and shall procure that their respective Affiliates shall keep confidential all information disclosed under this Agreement and all Distributor Customer information, whether that information is:

16.2.1 generated or commissioned by Thistle BV; or

16.2.2 related to the business affairs of any of the Parties or of their Affiliates or Distributor's Customers.

16.3 The restrictions in Clause 16.2 shall not apply to:

16.3.1 information which enters the public domain otherwise than by breach of this Agreement;

16.3.2 information already in the possession of a Party or any of its



Affiliates before disclosure to it under this Agreement and which was not acquired directly or indirectly from another Party or one of its Affiliates;

16.3.3 information lawfully obtained from a third party who is free to disclose such information;

16.3.4 information developed or created by a Party or any of its Affiliates independently of this Agreement;

16.3.5 disclosures of information solely as requested or required to be disclosed by any court or governmental or regulatory authority entitled by law to require the same PROVIDED ALWAYS THAT, prior to such disclosure if practicable, the disclosing Party shall notify in writing the owner of such information (where the identity of such owner can be determined) that such request has been made

PROVIDED THAT the Party seeking to rely on an exemption contained in this Clause 16.3 shall provide such evidence as the other Party may reasonably require to prove that the information sought to be exempted falls within the relevant category.

16.4 The restrictions contained in Clause 16.2 shall last for a period of five years from the relevant disclosure, without prejudice to any continuing restriction which may apply to the relevant information under any other agreement binding on the Parties, and shall survive termination of this Agreement for whatever reason.

16.5 Thistle BV shall take such steps as are reasonably practicable to maintain the security of communications and Distributor's Customer information conveyed by means of the Global Platform. Both Parties shall comply with the Data Segregation Agreement.

## **17 Term**

The term of this Agreement shall commence as soon as the conditions contained in Clauses 1.10 and 1.11. are satisfied and shall continue in force until termination in accordance with Clause 18.

**18    Termination**

18.1 This Agreement shall be terminable upon notice in writing by either Party on the other taking immediate effect if:

18.1.1 an event of Bankruptcy shall have occurred with respect to the other Party; or

18.1.2 Thistle BV is dissolved or terminated or BT ceases to be a shareholder of Thistle BV, for any of the reasons stated in and pursuant to the terms of the Framework Agreement (including, but not limited to, Performance Shortfall, Bankruptcy, Change of Control or Event of Default.)

18.2 Subject to the provisions of Clause 19 below, Thistle BV shall without prejudice to its other rights have the right to suspend the provision of any Service in the event that it is entitled to terminate this Agreement pursuant to Clause 18.1.

18.3 Neither Party shall have the right to terminate this Agreement on the basis of the other Party's material breach of this Agreement, unless such breach constitutes an Event of Default, under the terms of the Framework Agreement, and also results in either the dissolution or termination of Thistle BV or BT's ceasing to be a shareholder of Thistle BV, under the terms of the Framework Agreement. In any event, a material breach by the other Party shall be subject to the dispute resolution procedures (including executive escalation and, if applicable, arbitration) specified in the Framework Agreement.

**19    Consequences of Termination**

19.1 In the event of termination of this Agreement for any reason other than under Clause 18.1.1, Thistle BV shall continue to provide Global Communications Services to the Distributor for such period (not exceeding three years from the date of termination) and to such extent as the Distributor may be under a contractual obligation to any Customer to provide Global Communications Services.

**19.2 In the event of termination for whatever reason:**

- 19.2.1 outstanding unpaid invoices rendered by Thistle BV in respect of the Global Communications Services shall remain payable and invoices in respect of Global Communication Services ordered before termination but for which an invoice has not been submitted shall be payable, by the Distributor in accordance with the terms of this Agreement;
- 19.2.2 the Distributor shall cease to promote, market or advertise the Global Communications Services or to make any use of the Thistle BV Trade Marks other than to complete performance under an existing Customer contract;
- 19.2.3 the Distributor shall at its own expense join with Thistle BV in procuring the cancellation of any registered user agreements entered into pursuant to Clause 7.6;
- 19.2.4 the provisions of Clauses 15, 16 and 21 shall continue in force in accordance with their respective terms;
- 19.2.5 Neither party shall have a claim against the other for compensation for loss of distribution rights, loss of goodwill or any similar loss;
- 19.2.6 subject as otherwise provided herein and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under this Agreement; and
- 19.2.7 The Distributor's Minimum Revenue Commitment established for a yearly period in accordance with the provisions of Schedule 11, shall be prorated to the date of termination.

**20 Force Majeure**

- 20.1 Neither Party shall be liable for any breach of this Agreement due to any cause beyond its reasonable control ("Force Majeure") including without limitation Act of God, insurrection or civil disorder, war or military

operations, national or local emergency, acts or omissions of government, highway authority or other competent authority, compliance with any statutory obligation or executive order, industrial disputes of any kind (whether or not involving either Party's employees), fire, lightning, explosion, flood, subsidence, weather of exceptional severity, acts or omissions of persons for whom neither Party is responsible including without limitation public telecommunication operators in their capacity as such Provided That a Party shall only be excused from liability under this Clause 20.1 to the extent that it has used all due diligence to remove or avoid the effect of Force Majeure.

- 20.2 Thistle BV or the Distributor shall promptly notify the other of the occurrence of any Force Majeure event which has caused or is likely to cause it to fail to perform its obligations under this Agreement.

## **21 Choice of Law and Jurisdiction**

- 21.1 This Agreement shall be governed by and construed and interpreted in accordance with Laws of the State of New York, excluding the choice of laws rules.
- 21.2 The Parties shall follow the Dispute Resolution provisions specified in the Framework Agreement in connection with all claims arising out of or relating to this Agreement.

## **22 Relationship between Thistle BV and Distributor**

- 22.1 The Distributor agrees that it is an independent contractor fully responsible for its acts or defaults (including those of its employees or agents). The Distributor agrees that in all correspondence and other dealings relating directly or indirectly to the Global Communications Services it shall clearly indicate that it is acting as a distributor.
- 22.2 Except where otherwise expressly provided for in this Agreement or mutually agreed, the Distributor has no authority or power to bind or contract or negotiate in the name of or to incur any debt or other obligation on behalf of or create any liability against Thistle BV in any way or for any purpose. The Distributor shall transact all business pursuant to

this Agreement on its own behalf and for its own account.

**23 Intellectual Property Rights and Indemnity**

- 23.1 All matters dealing with Intellectual Property Rights arising under this Agreement shall be dealt with in accordance with the terms of the IPR Agreement.
- 23.2 Thistle BV will indemnify and hold harmless the Distributor against any damages (including reasonable costs) that may be awarded or agreed to be paid to any third party in respect of any claim or action that the receipt from Thistle BV, of Global Communications Services or material relating to the marketing, advertising, sale or distribution of the Global Communications Services by the Distributor infringes the patent, copyright, registered design, unregistered design rights, semi-conductor topography rights, service mark or trade mark rights of said third party ("Intellectual Property Infringement") Provided That the Distributor:
- 23.2.1 gives notice to Thistle BV of any Intellectual Property Infringements (or any allegations thereof) forthwith upon becoming aware of the same;
- 23.2.2 gives Thistle BV the sole conduct of the defence to any claim or action in respect of an Intellectual Property Infringement (or any allegation thereof) and does not at any time admit liability or otherwise attempt to settle or compromise the said claim or action except upon the express instructions of Thistle BV in writing; and
- 23.2.3 acts in accordance with the reasonable instructions of Thistle BV and gives to Thistle BV such assistance as it shall reasonably require in respect of the conduct of the said defence including, without prejudice to the generality of the foregoing, the filing of all pleadings and other court process and the provision of all relevant documents.
- 23.3 Thistle BV shall reimburse the Distributor its reasonable costs incurred in complying with the provisions of Clause 23.2.
- 23.4 Thistle BV shall have no liability to the Distributor in respect of an Intellectual Property Infringement if the same results from any breach of

the Distributor's obligations under this Agreement.

**23.5** In the event of an Intellectual Property Infringement, Thistle BV shall be entitled at its own expense and option either to:

**23.5.1** procure the right for the Distributor to continue using the Global Communications Services; or

**23.5.2** make such alterations, modifications or adjustments to the Global Communications Services that they become non-infringing without incurring a material diminution in performance or function; or

**23.5.3** replace the Global Communications Services with non-infringing substitutes provided that such substitutes do not entail a material diminution in performance or function.

**23.6** If Thistle BV in its reasonable judgement is not able to exercise any of the options set out at Clauses 23.5.1, 23.5.2 or 23.5.3 above within 90 days of the date it received notice of the Intellectual Property Infringement, then either Party, without prejudice to any other rights or remedies it may have hereunder or at law, shall be entitled to terminate the affected Global Communications Service by 7 days' notice upon the other Party.

**23.7** Thistle BV shall have no liability to the Distributor in respect of an Intellectual Property Infringement if the same results from:

**23.7.1** work carried out by Thistle BV, its agents or employees in accordance with directions or specifications given by the Distributor or its Customer; or

**23.7.2** the direct or indirect connection of the Distributor's Network or of any equipment or apparatus other than that referred to in this Agreement to the Global Platform or to a Remote Network.

The Distributor shall indemnify Thistle BV in respect of any such Intellectual Property Infringement in the same terms as Clauses 23.2, 23.3, 23.4 and 23.7.1 mutatis mutandis.

## **24     Invalidity**

24.1 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The Parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

**25 Assignment**

25.1 Subject to the provisions of this Clause 25, neither Party may assign, novate or transfer this Agreement without the consent of the other. Any purported assignment of this Agreement not in accordance with this Clause 25 shall be void.

25.2 Subject to the prior consent in writing of Thistle BV the Distributor may appoint one or more sub-distributors and may supply any Global Communications Services provided by Thistle BV to such sub-distributor for sale to Customers in the Territory. Upon termination of this Agreement for any reason, the Distributor shall use its best endeavours to procure the novation of all existing sub-distributor agreements to Thistle BV as quickly as practicable.

25.3 Thistle BV shall be entitled to perform any of the obligations undertaken by it and to exercise any of the rights granted to it under this Agreement through any other company which at the relevant time is its Affiliate and any act or omission of any such company shall for the purposes of this Agreement be deemed to be the act or omission of Thistle BV.

25.4 Thistle BV may assign this Agreement and the rights and obligations thereunder to any Affiliate of Thistle BV, and Distributor may assign or sub-contract its rights and obligations to a Distributor Affiliate.

25.5 This Agreement is personal to the Distributor, and, except as stated herein, may not without the written consent of Thistle BV, be assigned, mortgaged, charged (otherwise than by floating charge) or disposed of or sub-contracted or otherwise delegated.

25.6 The Distributor shall indemnify and hold Thistle BV harmless against all liability, loss, damage and expense (including but not limited to reasonable legal fees and legal costs) to the extent that such liability, loss, damage or expense was caused by the exercise of the Distributor's rights under this Clause 25.

**26 Notices**

26.1 Any and all notices pursuant to this Agreement shall be in writing and signed by (or by some person duly authorised by) the Party giving it and may be served by leaving it at, or sending it by facsimile, express air mail service, prepaid recorded delivery or registered post to, the address of the relevant recipient Party or Parties set out in Clause 26.2 (or as otherwise notified from time to time hereunder). Any notice so served by facsimile or post shall be deemed to have been received:

26.1.1 in the case of express air mail service, on the first working day following the day of despatch and, in the case of facsimile, receipt of a signal by the sender's machine that the message has been received; and

26.1.2 in the case of recorded delivery or registered post, five working days from the date of posting.

26.2 The addresses of the Parties for the purpose of Clause 26.1 are as follows:

BT:

Secretary and Chief Legal Adviser  
BRITISH TELECOMMUNICATIONS PLC.  
81 Newgate Street.  
London,  
WC1A 7AJ.

FAO Colin R Green



Copy to:

Telephone:

Facsimile:

For the attention of:

DETAILS NEEDED FOR Thistle BV

[]

For the attention of: []

Copy to

[]

## **27    General**

- 27.1 This Agreement (including its Schedules) and the Framework Agreement represents the entire understanding between the parties in relation to the subject-matter hereof and supersede all other agreements and representations made by either Party, whether oral or written. In the event of inconsistency between terms and conditions of, this Agreement and the Framework Agreement, the provisions of Section 3.1 of the Framework Agreement shall apply.
- 27.2 Failure by either Party to enforce any of its rights hereunder shall not be taken as or deemed to be a waiver of such right.
- 27.3 This Agreement may only be modified if such modification is in writing and signed by a duly authorised representative of each Party. Changes to any of the Schedules to this Agreement may be handled by way of the Change Control Procedure set out in Schedule 11.
- 27.4 The Parties shall at their own expense execute all such documents and do such acts and things as may reasonably be required for the purpose of

giving full effect to this Agreement.

IN WITNESS whereof the parties or their authorised representatives have set their hands the day and year first above written

SIGNED for and on behalf of \_\_\_\_\_ )  
BRITISH TELECOMMUNICATIONS PLC \_\_\_\_\_ )

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

SIGNED for and on behalf of \_\_\_\_\_ )  
Thistle BV \_\_\_\_\_ )

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT G-1**

**FORM OF DISTRIBUTION AGREEMENT (BT SERVICES)**

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Final Version

Date: \_\_\_\_\_

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**DISTRIBUTION AGREEMENT (BT SERVICES)**

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**THIS AGREEMENT IS BETWEEN:**

- (1) NEWCO , an entity organized under the laws of the .....("NEWCO "), having an office at \_\_\_\_\_; and
- (2) BRITISH TELECOMMUNICATIONS PLC. ("BT"), having its registered office at 81 Newgate Street. London, WC1A 7AJ.

**RECITALS**

NEWCO , a joint venture formed by AT&T Corp. (AT&T) and BT, and BT desire a NEWCO Subsidiary through its MNC Unit ("Distributor"), to distribute BT Services to certain business customers that are Qualifying MNC Customers, pursuant to the terms of the Framework Agreement entered among AT&T Corp., VLT Corporation, British Telecommunications plc, BT (Netherlands) Holdings B.V. and NEWCO simultaneously herewith ("Framework Agreement") and this Agreement.

**PART I: PRELIMINARY MATTERS****1 Interpretation****1.1 Definitions:**

All terms defined in the Framework Agreement shall have the same meaning in this Agreement, unless otherwise modified by a definition set forth in this section and in this Agreement.

**"BT Marks"** means BT's name, logo, trademarks, and service marks (registered and unregistered), trade dress and other symbols that serve to identify and distinguish BT from its competitors.

**"BT Services"** means the services Distributor is authorized to distribute pursuant to the Agreement, as further described in Schedule 2.

**"Charge"** means any charge payable by the Distributor to BT in consideration of the provision of the BT Services, as further described in Schedule 8.

**"Equipment"** means any telecommunication apparatus installed or otherwise made available at a Site in order to provide BT Services to a Customer.

**"Forecast"** means the non-binding projections of requirements for BT Services provided by the Distributor to BT in accordance with this Agreement.

**"Intellectual Property"** means any patent, copyright, registered design, trade mark or other industrial or intellectual property right in respect of the BT Services, and applications for any of the foregoing.

**"Invoice Value"** means the sums invoiced by BT to the Distributor in respect of any BT Services, less any value added tax (or other taxes, duties or levies).

**"Message"** means the subject matter of the transmission or conveyance falling within subparagraphs (a) to (d) in the definition of "Telecommunication System" in this Clause 1.1.

**"Party"** means a party to this Agreement.

**"Remote Network"** means those Telecommunication Systems owned and/or operated by a third party by means of which Messages are passed between any NEWCO Global Point of Presence and any Site located outside the United Kingdom.

**"Service Description"** means the description of the BT Services, including the applicable service levels, that are provided to Distributor pursuant to this Agreement.

**"Service Request Procedure"** means the procedure for ordering BT Services set out in Schedule 3.

**"Site"** means a Customer premise in the United Kingdom.

**"Telecommunication System"** means a system for the conveyance, through the agency of electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy, of:

- (a) speech, music and other sounds;
- (b) visual images;

(c) signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of sounds or visual images; or

(d) signals serving for the actuation or control of machinery or apparatus.

**"Technical Intellectual Property Rights"** mean patents, utility models, design patents, registered designs, copyright of any kind, semi-conductor topography rights, design rights and any rights of a similar nature in any country of the world including rights in trade secrets and confidential information where such rights arise and includes applications therefor, but excludes BT Marks.

**"Year"** means any complete period of twelve months commencing on the Effective Date of this Agreement and on each anniversary thereof.

- 1.2 The expressions "BT" and "Distributor" shall include their respective successors and permitted assigns.
- 1.3 Except as expressly provided herein, any reference to any legislative act shall be deemed to include any amendment, replacement or re-enactment thereof for the time being in force and to include any delegated legislation, orders, notices, directions, consents or permissions made thereunder and any condition attaching thereto.
- 1.4 Words importing the singular include the plural and vice versa and words importing gender include any other gender.
- 1.5 The headings in this Agreement are for ease of reference only and shall not be taken into account in the construction or interpretation of any provision to which they refer.
- 1.6 References in this Agreement to Clauses or Schedules are references to clauses of or schedules to this Agreement. The Schedules are an integral part of this Agreement.
- 1.7 Any undertaking in this Agreement not to do any act or thing shall be deemed to include an undertaking not to permit or suffer the doing of that act or thing.

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- 1.8 The expression "person" used in this Agreement shall include (without limitation) any individual, partnership, body corporate or unincorporated association.
- 1.9 References in this Agreement to a Party being obliged to procure that another person shall do something or shall not do something shall be deemed to require that Party to exercise all voting rights and other powers of control available to that Party in relation to that person so as to procure, insofar as that Party is able by the exercise of such rights and powers, that that person does or does not do such thing, as appropriate.
- 1.10 In accordance with Article 20.1(c) of the Framework Agreement, this Agreement shall become effective upon the Closing ("Effective Date").
- 1.11 Either party will be permitted to withdraw from or not to consummate this Agreement by providing written notice thereof to the other party if regulatory authority of competent jurisdiction raises objections of a competition or regulatory nature to this Agreement and/or its terms which the parties, having used their reasonable endeavours, are unable to resolve. The parties shall be deemed not to have been able to resolve such objections if either or both of them are unable to find solutions satisfactory to such authorities, which do not undermine their fundamental rationale for entering into this agreement.

## **PART II: DISTRIBUTORSHIP**

### **2 Appointment as Distributor**

- 2.1 BT appoints Distributor as its exclusive distributor for the marketing, promotion, sale and distribution of BT Services to Qualifying MNC Customers, except as provided in the Framework Agreement and for wireless services, which shall be the subject of an agency agreement to be agreed.

## **PART III: SERVICES**

### **3 Provision of BT Services**

- 3.1 For the purposes of this Clause 3:

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- 3.1.1 **"Non-standard BT Service"** means a service or feature which at the time of the request is not included in the current range of BT Services; and
- 3.1.2 **"Additional Request"** means a request by the Distributor for BT Services where the effect of such request, taken together with all current commitments of BT to provide BT Services to Distributor would be to exceed the aggregate requirements for BT Services for the relevant period as stated in the Forecast.
- 3.2 Within ninety days of the Effective Date of this Agreement, the Distributor shall provide an initial non-binding forecast in accordance with the provisions of Schedule 4 of the aggregate requirements for each of the BT Services. The procedure for making and revising such a Forecast and for subsequent Years is contained in Schedule 4.
- 3.3 BT shall provide BT Services to the Distributor upon request except in the case of (a) an Additional Request or (b) where the Service requested includes non-standard BT Services, in which event BT shall use reasonable endeavours to offer terms on which it is prepared to provide such BT Services but shall not be under any liability for failure to do so to the Distributor.
- 3.4 The Distributor shall order BT Services in accordance with the Service Request Procedure described in Schedules 3 and 5.
- 3.5 Where BT supplies any BT Services pursuant to this Clause 3, it shall do so in accordance with the applicable Service Description or, in the case of non-standard BT Services, in accordance with a mutually agreed Service Description.
- 3.6 The terms and conditions pursuant to which BT provides the BT Services to the Distributor are set out in Schedule 5. The procedures under which BT Services including Non-standard BT Services are supplied shall be subject to mutual agreement in accordance with the Service Request Procedure set out in Schedule 3.
- 3.7 BT shall provide customer support to the Distributor to the extent set out in any applicable Service Description and as set out in Schedule 6.

- 3.8 BT and the Distributor shall co-operate as may be reasonably necessary to co-ordinate the operational matters affecting the interworking between NEWCO's Global Communications Services and BT Services. BT shall be excused from any failure to comply with the applicable service levels to the extent such failure is caused by NEWCO's Global Communications Services.
- 3.9 In relation to any particular Customer or Customers:
- 3.9.1 either Party may request the other Party to act as agent of the other Party, on terms to be agreed, in discharging its obligations under this Clause 3 where this is necessary for regulatory or other compelling reasons (including without limitation economic reasons); and
- 3.9.2 either Party may by mutual agreement act as subcontractor to the other in performing the obligations of the other under this Clause 3 on terms to be agreed.

#### **4 New BT Services and Changes to Existing BT Services**

- 4.1 From time-to-time (at least bi-annually), the Parties **will** meet to discuss potential changes (e.g. additions, modifications, discontinuances) to the BT Services, new technology, Customer service requirements, Charges, Customer support, BT Services and the responsibilities of the Parties hereunder. BT may upon notice add to, substitute or reduce the current range of BT Services or vary the Service Description and terms and conditions applicable to any of the current range of BT Services, in accordance with the procedure set out in Schedule 1, Provided that any such substitution, reduction or variation shall not apply for a period of three months from notification, subject to Applicable Law, if in the reasonable opinion of BT, it would affect adversely the functionality or performance specifications of:
- 4.1.1 any BT Service being provided to the Distributor to the extent that the Distributor is under an obligation to any Customer to provide such BT Service; or
- 4.1.2 any BT Service already requested by the Distributor under the Service Request Procedure set out in Schedule 3, to the extent that

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the Distributor may be or become obligated to any Customer to provide such BT Service; or

- 4.1.3 any BT Service in respect of which BT has given a quotation to the Distributor under the Service Request Procedure, for the validity period of such quotation as specified in the relevant Service Description or as detailed in Schedule 9 and to the extent that the Distributor may be or become obligated to any Customer to provide such quoted BT Service.

4.2 While BT shall have the ultimate discretion to implement changes to the Service Descriptions of BT Services as described above, it shall take due consideration of the impacts of such changes on the Distributor's Customers, and shall give as much advance notice as reasonably practical, where such changes may be expected to have an adverse effect on the Distributor's Customers.

## **PART IV: MARKETING, SUPPORT AND PURCHASE OBLIGATIONS**

### **5 Obligations of the Distributor**

5.1 The Distributor shall:

- a) use reasonable endeavours to sell BT Services to Qualifying MNC Customers, including without limitation maintaining adequate sales and distribution personnel and appropriate facilities; and
- b) spend such sums on advertising and promoting the BT Services during each Year of this Agreement, as are reasonably necessary for the Distributor to carry out its obligations under this Agreement.

5.2 In accordance with Section 10.1(a) of the Framework Agreement, Distributor, and its Subsidiaries and Affiliates, shall purchase all Communications Services under this Agreement in the United Kingdom exclusively from BT or its Subsidiaries.

5.3 The Distributor shall attend periodical marketing meetings to consider market trends, BT Services development, quality of service, customer satisfaction, pricing and other matters agreed by the Parties.

### **6 Obligations of BT**

6.1 BT shall provide reasonable technical and commercial support to the Distributor in sales and marketing activities, as follows:

6.1.1 advising on the most suitable means, technical and commercial, of meeting the requirements of a potential Qualifying MNC Customer;

6.1.2 supporting account management as mutually agreed to by the parties; and

6.1.3 assisting and participating in the preparation and presentation of proposals to potential Customers, consistent with product management support;

as set out and subject to the terms of Schedule 7.

6.2 BT shall attend periodic marketing meetings to consider market trends, BT Services development, quality of service, Customer satisfaction and other matters agreed upon by the parties.

6.3 BT shall provide the training referred to in Schedule 12.

6.4 BT shall provide all other services as specified in the Schedules to this Agreement.

## **7 Branding**

7.1 BT hereby does not authorize the Distributor to use the BT Marks.

7.2 The Distributor shall have no rights in respect of any trade names or BT Marks.

## **PART V: TECHNICAL AND OPERATIONAL MATTERS**

**8 [Intentionally left blank]**

## **9 Connection of Equipment and Systems**

9.1 Neither party shall connect directly or indirectly to the other's network any equipment or Telecommunication System which damages or is likely to cause any damage to the other's network.



9.2 The Distributor shall comply with, and shall require and ensure that its Customers comply with, such reasonable security procedures relating to the use of the BT Services, as BT may notify to the Distributor from time to time.

9.3 BT shall comply with such reasonable security procedures relating to the use of the NEWCO's Global Platform, as the Distributor may notify to BT from time to time.

## **10 Equipment**

10.1 The provisions of this Clause 10 shall apply insofar as BT is obliged in accordance with the applicable Service Description to provide any Equipment at a Site.

10.2 BT shall supply the Distributor in reasonable time with the relevant information to enable the Distributor to co-ordinate with its Customer, where necessary, to prepare the Site for the delivery and installation of the Equipment. The Distributor shall provide reasonable assistance and facilities to BT in the installation of the Equipment and shall subsequently provide or procure suitable accommodation, assistance, facilities, and environmental conditions for the housing of the Equipment and all necessary electrical and other installations and fittings. The Distributor shall use all reasonable endeavours to effect such preparation and provision at no cost to BT before the Equipment is installed at a Site.

10.3 The Distributor undertakes directly or indirectly:

10.3.1 to house, keep and use the Equipment in accordance with such reasonable written instructions as may be notified by BT from time to time;

10.3.2 unless otherwise agreed, to keep the Equipment at the Site and not to add to, modify, or in any way interfere with, the Equipment;

10.3.3 not to cause the Equipment to be repaired or serviced except as approved by BT, its agents or subcontractors;

10.3.4 to provide BT with reasonable access to the Equipment and in any event such access as is specified in the applicable Service Description.

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- 10.4 BT undertakes directly or indirectly to install the Equipment in a timely and proper manner.
- 10.5 No title to the Equipment shall pass to any person unless otherwise expressly agreed.
- 10.6 The Distributor shall be responsible for the Equipment while it is at a Site and shall be liable to BT for any loss or damage to the Equipment (except in so far as any such loss or damage is attributable to the negligent or willful act or omission of BT, its agents, subcontractors or employees).

## **11 Access to Sites**

- 11.1 The Distributor shall ensure that BT, its employees, agents and subcontractors have such access to any Site as may be reasonably necessary for the performance by BT of its obligations under this Agreement and in any event such access as may be specified in the applicable Service Description.
- 11.2 The Distributor shall use its reasonable endeavours to ensure that no employee of BT, its agents or subcontractors when requesting access to any Site pursuant to Clause 11.1 is refused admittance to such Site or required to leave such Site except for good and substantial cause. In the event of any such refusal or requirement without good cause:
- 11.2.1 BT shall be excused from any failure to provide BT Services in accordance with the applicable service levels to the extent that such failure results from such refusal or requirement; and
- 11.2.2 the Distributor shall reimburse BT in respect of any additional costs and expenses which it may incur as a result of such refusal or requirement.

## **12 Regulatory Approvals**

- 12.1 Where there is a requirement under the law or regulation of any jurisdiction to obtain (a) any consent, license or authorization for the provision of BT Services and/or (b) approval for the use of any telecommunication apparatus by any person providing or making use of the BT Services, then as between the Parties hereto one or other of them shall be obliged to obtain or to procure the obtaining by its contractors or

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agents of such consent, license or authorization in accordance with the following provisions:

12.1.1 in relation to the supply of BT Services to the Distributor, the obligation shall be that of BT; and

12.1.2 in relation to Distributor's supply of BT Services to the Qualifying MNC Customer, the obligation shall be that of the Distributor. BT has responsibility to understand and advise on the regulatory environment in the United Kingdom. Where possible, BT will provide assistance to enable the Distributor to sell through regulatory arrangements effected by the Distributor, but where there is a requirement for Distributor to have its own license, the Distributor shall do so at its own expense, but with assistance from BT or its agents.

12.2 Where the obligation to obtain any such consent, license or authorization is imposed on either Party or both Parties under any law or regulation in any jurisdiction, then the obligation shall be that of that Party or as the case may be of both Parties, notwithstanding any contrary provision of Clause 12.1.

12.3 BT will use Reasonable Best Efforts to conclude, at its expense, all necessary licensing arrangements to enable Distributor to distribute regulated interstate BT Services in the United Kingdom pursuant to this Agreement. Distributor will be responsible for obtaining, at its expense, all additional licenses and authorizations, including authorizations necessary to enable Distributor to distribute interstate, intrastate and local BT Services in the United Kingdom. Upon Distributor's request, BT will provide reasonable and appropriate assistance to Distributor in connection with procuring such interstate, intrastate and local authorizations, and BT's expenses incurred in doing so shall, following advance notice to Distributor, be charged back to Distributor.

## **PART VI: FINANCIAL MATTERS**

### **13 Charges**

13.1 In consideration of the provision of the BT Services, the Distributor shall pay to BT the Charges calculated in accordance with and subject to adjustment as provided for in Clause \_ of Schedule 8.

- 13.2 Where the Distributor requests a quotation for the provision of Non-standard BT Services, such quotation shall be in Pounds sterling unless otherwise agreed, and shall be in accordance with the Customised Products and Services section of Schedule 7, provided that BT shall not be obliged to quote in respect of a service period exceeding 36 months.
- 13.3 All Charges are exclusive of any applicable value added tax, sales tax or other indirect taxes which shall be separately stated by taxing jurisdiction and charged in accordance with applicable law and payable by the Distributor, except to the extent that the Distributor provides BT a valid tax exemption certificate. BT income taxes shall not be chargeable to the Distributor.
- 13.5 The price and other terms and conditions on which BT Services are supplied to its Customers shall be determined by the Distributor.

#### **14 Billing and Payment**

- 14.1 All Charges shall be payable in Pounds sterling, unless otherwise agreed.
- 14.2 Charges shall be due monthly in arrears.
- 14.3 BT shall present an invoice for Charges and associated Invoice Detail (usage data) as soon as reasonably practicable but typically within 30 to 60 days after the month in which BT Services are provided.. The sum stated in each invoice shall be payable within 30 days of presentation.
- 14.4 Neither invoices nor Invoice Detail may be presented later than twelve (12) months from the end of the month in which BT Services are provided.
- 14.5 Each invoice presented by BT shall be in an agreed format and shall provide such information as is reasonably necessary for the verification of Charges and as set out in Schedule 8.
- 14.6 In respect of any sum payable under this Agreement, in the event of late payment which is not related to or caused by BT's late invoicing described in Clause 14.4, interest shall be chargeable from the date on which such sum was due and payable until the date of payment. Such interest shall be calculated from day to day at a rate equivalent to the lesser of the

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permissible lawful rate in the Territory and two per cent above LIBOR, and shall accrue both before and after judgment. Interest shall not be charged unless BT has delivered at least two written reminders to the Distributor.

## **PART VII: FURTHER PROVISIONS**

### **15    Liability of the Parties**

- 15.1 BT and the Distributor shall indemnify and hold each other harmless against all liability, loss, damage and expense (including but not limited to reasonable legal fees and legal costs) resulting from injury to or death of any person (including injury to or death of their respective subcontractors or employees) to the extent that such liability, loss, damage or expense was caused by any negligent or willful act or omission by the Party from whom indemnity is sought, its agents or employees.
- 15.2 BT and the Distributor shall indemnify and hold each other harmless against all liability, loss, damage and expense (including but not limited to reasonable legal fees and legal costs) resulting from loss of or damage to real or personal property (including damage to their property) to the extent that such liability, loss, damage or expense was caused by any negligent or willful act or omission by the Party from whom indemnity is sought, its agents or employees.
- 15.3 THE AGGREGATE LIABILITY OF EACH PARTY TO THE OTHER FOR ALL CLAIMS MADE DURING ANY YEAR UNDER THIS AGREEMENT FOR DAMAGES NOT OTHERWISE EXCLUDED HEREUNDER SHALL BE LIMITED TO TEN MILLION US DOLLARS IN RESPECT OF ANY OR ALL CLAIMS MADE IN THAT YEAR.
- 15.4 WHERE IN RELATION TO ANY SERVICE THE APPLICABLE SERVICE DESCRIPTION PROVIDES FOR A SYSTEM OF REBATES OR CREDITS AGAINST CHARGES IN RESPECT OF FAILURE TO PROVIDE SUCH SERVICE IN ACCORDANCE WITH THE APPLICABLE SERVICE LEVELS, SUCH REBATES OR CREDITS SHALL BE THE EXCLUSIVE FINANCIAL REMEDY OF THE DISTRIBUTOR IN RESPECT OF SUCH FAILURE. FOR THE AVOIDANCE OF DOUBT SUCH REBATES OR CREDITS SHALL BE DEEMED TO BE A LIABILITY OF BT FOR THE PURPOSES OF THIS AGREEMENT.
- 15.5 Except with respect to such loss or damage as is referred to in Clauses 15.1 and 15.2, the Distributor shall ensure that to the extent permitted by

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applicable law its contracts with Customers exclude all liability of BT to the Customer and preclude the Customer from making any claim against BT, and in the event that any such claim is made by a Customer howsoever arising from or related to the provision of BT Services under this Agreement the Distributor shall indemnify BT in respect of such claim.

15.6 IN ANY EVENT, IN NO CIRCUMSTANCES INCLUDING THE NEGLIGENT ACT OR OMISSION OF ITSELF, ITS SERVANTS OR AGENTS SHALL EITHER PARTY BE LIABLE TO THE OTHER IN CONTRACT, TORT OR OTHERWISE FOR ANY LOSS OF REVENUE, BUSINESS, CONTRACTS, ANTICIPATED SAVINGS OR PROFITS OR ANY LOSS OR DESTRUCTION OF DATA OR FOR ANY INDIRECT OR CONSEQUENTIAL LOSS WHATSOEVER.

15.7 The provisions of this Clause 15 shall continue to apply notwithstanding the termination or expiry of this Agreement for any reason whatsoever.

## **16 Confidentiality and Data Protection**

16.1 BT shall not disclose any Message conveyed by means of the BT Services or the existence of any such Message except in relation to any information requested or required to be disclosed by any court or governmental or regulatory authority entitled by law to require the same.

16.2 The Parties shall procure that their respective Affiliates shall keep confidential all information disclosed under this Agreement and all Distributor Customer information, whether that information is:

16.2.1 generated or commissioned by BT; or

16.2.2 related to the business affairs of any of the Parties or of their Affiliates or Distributor's Customers.

16.3 The restrictions in Clause 16.2 shall not apply to:

16.3.1 information which enters the public domain otherwise than by breach of this Agreement;

16.3.2 information already in the possession of a Party or any of its Affiliates before disclosure to it under this Agreement and which

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was not acquired directly or indirectly from another Party or one of its Affiliates;

- 16.3.3 information lawfully obtained from a third party who is free to disclose such information;
- 16.3.4 information developed or created by a Party or any of its Affiliates independently of this Agreement;
- 16.3.5 disclosures of information solely as requested or required to be disclosed by any court or governmental or regulatory authority entitled by law to require the same PROVIDED ALWAYS THAT, prior to such disclosure if practicable, the disclosing Party shall notify in writing the owner of such information (where the identity of such owner can be determined) that such request has been made.

PROVIDED THAT the Party seeking to rely on an exemption contained in this Clause 16.3 shall provide such evidence as the other Party may reasonably require to prove that the information sought to be exempted falls within the relevant category.

- 16.4 The restrictions contained in Clause 16.2 shall last for a period of five years from the relevant disclosure, without prejudice to any continuing restriction which may apply to the relevant information under any other agreement binding on the Parties, and shall survive termination of this Agreement for whatever reason.
- 16.5 BT shall take such steps as are reasonably practicable to maintain the security of communications and Distributor's Customer information conveyed by means of the BT Services. Both Parties shall comply with the Data Segregation Agreement.

## **17 Term**

The term of this Agreement shall commence as soon as the conditions contained in clauses 1.10 and 1.11 are satisfied and shall continue in force until termination in accordance with Clause 18.

## **18 Termination**

**18.1** This Agreement shall be terminable upon notice in writing by either Party on the other taking immediate effect if:

**18.1.1** an event of Bankruptcy shall have occurred in respect of the other Party, or

**18.1.2** the Newco Group is dissolved or terminated or BT ceases to be a shareholder of NEWCO, for any of the reasons stated in and pursuant to the terms of the Framework Agreement (including, but not limited to, Performance Test Shortfall, Bankruptcy, Change of Control or Event of Default).

**18.2** Subject to the provisions of Clause 19.1 below, BT shall without prejudice to its other rights have the right to suspend the provision of any BT Service in the event that it is entitled to terminate this Agreement pursuant to Clause 18.1.

**18.3** Neither Party shall have the right to terminate this Agreement on the basis of the other Party's material breach of this Agreement, unless such breach constitutes an Event of Default under the Framework Agreement and also results in the dissolution or termination of the Newco Group. In any event, a material breach by the other Party shall be subject to the dispute resolution procedures (including executive escalation and arbitration) specified in the Framework Agreement.

## **19     Consequences of Termination**

**19.1** In the event of termination of this Agreement for any reason, BT shall continue to provide BT Services to the Distributor for such period (not exceeding three years from the date of termination) and to such extent as the Distributor may be under a contractual obligation to any Customer to continue providing BT Services.

**19.2** In the event of termination for whatever reason:

**19.2.1** outstanding unpaid invoices rendered by BT in respect of the BT Services shall remain payable, and invoices in respect of BT Services ordered before termination but for which an invoice has not been submitted shall be payable, by the Distributor in accordance with the terms of this Agreement;



- 19.2.2 the Distributor shall cease to promote, market or advertise the BT Services or to make any use of the BT Trade Marks, other than to complete performance under an existing Customer contract;
- 19.2.3 the Distributor shall at its own expense join with BT in procuring the cancellation of any registered user agreements;
- 19.2.4 the provisions of clauses 15, 16 and 21 shall continue in force in accordance with their respective terms;
- 19.2.5 Neither party shall have a claim against the other for compensation for loss of distribution rights, loss of goodwill or any similar loss; and
- 19.2.6 subject to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under this Agreement.

## **20 Force Majeure**

- 20.1 Neither Party shall be liable for any breach of this Agreement due to any cause beyond its reasonable control ("Force Majeure") including without limitation Act of God, insurrection or civil disorder, war or military operations, national or local emergency, acts or omissions of government, highway authority or other competent authority, compliance with any statutory obligation or executive order, industrial disputes of any kind (whether or not involving either Party's employees), fire, lightning, explosion, flood, subsidence, weather of exceptional severity, acts or omissions of persons for whom neither Party is responsible including without limitation public telecommunication operators in their capacity as such, provided that, a Party shall only be excused from liability under this Clause 20.1 to the extent that it has used all due diligence to remove or avoid the effect of Force Majeure.
- 20.2 BT or the Distributor shall promptly notify the other of the occurrence of any Force Majeure event which has caused or is likely to cause it to fail to perform its obligations under this Agreement.

## **21 Choice of Law and Jurisdiction**

21.1 This Agreement shall be governed by and construed and interpreted in accordance with Laws of England and Wales, excluding the choice of laws rules.

21.2 The Parties shall follow the Dispute Resolution provisions specified in the Framework Agreement in connection with all claims arising out or relating to this Agreement.

## **22 Relationship between BT and Distributor**

22.1 The Distributor, an Affiliate of BT, acts as an independent contractor with respect to third parties, and as such is fully responsible for its acts or defaults (including those of its employees or agents). The Distributor agrees that in all correspondence and other dealings relating directly or indirectly to the BT Services it shall clearly indicate that it is acting as a distributor, and is solely responsible for the provision of such services to its customer.

22.2 Except where otherwise expressly provided for in this Agreement or mutually agreed, the Distributor has no authority or power to bind or contract or negotiate in the name of or to incur any debt or other obligation on behalf of or create any liability against BT in any way or for any purpose. The Distributor shall transact all business pursuant to this Agreement on its own behalf and for its own account.

## **23 Intellectual Property Rights and Indemnity**

23.1 All matters dealing with Intellectual Property Rights arising under this Agreement shall be dealt with in accordance with the terms of the IPR Agreement.

23.2 BT will indemnify and hold harmless the Distributor against any damages (including reasonable costs) that may be awarded or agreed to be paid to any third party in respect of any claim or action that the receipt from BT of BT Services or material relating to the marketing, advertising, sale or distribution of BT Services by the Distributor infringes the patent, copyright, registered design, unregistered design rights, semi-conductor topography rights, service mark or trade mark rights of said third party ("Intellectual Property Infringement"), provided that, the Distributor:

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- 23.2.1 gives notice to BT of any Intellectual Property Infringements (or any allegations thereof) forthwith upon becoming aware of the same;
  - 23.2.2 gives BT the sole conduct of the defense to any claim or action in respect of an Intellectual Property Infringement (or any allegation thereof) and does not at any time admit liability or otherwise attempt to settle or compromise the said claim or action except upon the express instructions of BT in writing; and
  - 23.2.3 acts in accordance with the reasonable instructions of BT and gives to BT such assistance as it shall reasonably require in respect of the conduct of the said defense including, without prejudice to the generality of the foregoing, the filing of all pleadings and other court process and the provision of all relevant documents.
- 23.3 BT shall reimburse the Distributor its reasonable costs incurred in complying with the provisions of Clause 23.2.
- 23.4 BT shall have no liability to the Distributor in respect of an Intellectual Property Infringement if the same results from any breach of the Distributor's obligations under this Agreement.
- 23.5 In the event of an Intellectual Property Infringement, BT shall be entitled at its own expense and option either to:
- 23.5.1 procure the right for the Distributor to continue using the BT Services; or
  - 23.5.2 make such alterations, modifications or adjustments to the BT Services that they become non-infringing without incurring a material diminution in performance or function; or
  - 23.5.3 replace the BT Services with non-infringing substitutes provided that such substitutes do not entail a material diminution in performance or function.
- 23.6 If BT in its reasonable judgment is not able to exercise any of the options set out at Clauses 23.5.1, 23.5.2 or 23.5.3 above within 90 days of the date it received notice of the Intellectual Property Infringement, then either Party, without prejudice to any other rights or remedies it may have
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hereunder or at law, shall be entitled to terminate pending orders for the affected BT Service by 7 days' notice upon the other Party.

23.7 BT shall have no liability to the Distributor in respect of an Intellectual Property Infringement if the same results from:

23.7.1 work carried out by BT, its agents or employees in accordance with directions or specifications given by the Distributor or its Customer; or

23.7.2 the direct or indirect connection of NEWCO's Global Platform or of any equipment or apparatus, other than that supplied by BT, to the BT Services.

The Distributor shall indemnify BT in respect of any such Intellectual Property Infringement in the same terms as Clauses 23.2, 23.3, 23.4 and 23.7 mutatis mutandis.

## **24 Invalidity**

24.1 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The Parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

## **25 Assignment**

25.1 Subject to the provisions of this Clause 25, neither Party may assign, novate or transfer this Agreement without the consent of the other. Any purported assignment of this Agreement not in accordance with this Clause 25 shall be void.

25.2 Subject to the prior consent in writing of BT, the Distributor may appoint one or more sub-distributors and may supply any BT Services provided by BT to such sub-distributor for sale to Qualifying MNC Customers. Upon termination of this Agreement for any reason, the Distributor shall use its

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best endeavours to procure the novation of all existing sub-distributor agreements to BT as quickly as practicable.

- 25.3 BT shall be entitled to perform any of the obligations undertaken by it and to exercise any of the rights granted to it under this Agreement through any other company which at the relevant time is its Affiliate and any act or omission of any such company shall for the purposes of this Agreement be deemed to be the act or omission of BT.
- 25.4 BT may assign this Agreement, in whole or in part, and the rights and obligations thereunder to any Affiliate of BT and Distributor may assign or sub-contract its rights and obligations concerning its performance to a Distributor Affiliate.
- 25.5 This Agreement is personal to the Distributor, and except as stated herein may not without the written consent of BT, be assigned, mortgaged, charged (otherwise than by floating charge) or disposed of or sub-contracted or otherwise delegated.
- 25.6 The Distributor shall indemnify and hold BT harmless against all liability, loss, damage, and expense (including but not limited to reasonable legal fees and legal costs) to the extent such liability, loss, damage or expense was caused by the exercise of the Distributor's rights under this clause 25.

## **26 Notices**

- 26.1 Any and all notices pursuant to this Agreement shall be in writing and signed by (or by some person duly authorized by) the Party giving it and may be served by leaving it at, or sending it by facsimile, express air mail service, prepaid recorded delivery or registered post to, the address of the relevant recipient Party or Parties set out in Clause 26.2 (or as otherwise notified from time to time hereunder). Any notice so served by facsimile or post shall be deemed to have been received:
- 26.1.1 in the case of express air mail service, on the first working day following the day of dispatch and, in the case of facsimile, receipt of a signal by the sender's machine that the message has been received; and
- 26.1.2 in the case of recorded delivery or registered post, five working days from the date of posting.

26.2 The addresses of the Parties for the purpose of Clause 26.1 are as follows:

BT:

Secretary and Chief Legal Adviser  
BRITISH TELECOMMUNICATIONS PLC.  
81 Newgate Street.  
London,  
WC1A 7AJ.

FAO Colin R Green

Copy to:

Telephone:

Facsimile:

For the attention of:

DETAILS NEEDED FOR NEWCO

[]

For the attention of: []

Copy to

[]

## **27    General**

27.1 This Agreement (including its Schedules) and the Framework Agreement represent the entire understanding between the parties in relation to the subject-matter hereof and supersede all other agreements and representations made by either Party, whether oral or written. In the event of inconsistency between terms and conditions of this Agreement

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and the Framework Agreement, the provisions of Section 3.1 of the Framework Agreement shall apply.

- 27.2 Failure by either Party to enforce any of its rights hereunder shall not be taken as or deemed to be a waiver of such right.
- 27.3 This Agreement may only be modified if such modification is in writing and signed by a duly authorized representative of each Party.
- 27.4 The Parties shall at their own expense execute all such documents and do such acts and things as may reasonably be required for the purpose of giving full effect to this Agreement.

IN WITNESS whereof the parties or their authorized representatives have set their hands the day and year first above written.

SIGNED for and on behalf of  
British Telecommunications Plc. by:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

SIGNED for and on behalf of  
NEWCO by:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_